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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10
11 WILLIAM D.,¹
12 Plaintiff
13 v.
14 ANDREW M. SAUL, Commissioner
15 of Social Security,²
16 Defendant.

Case No. 5:18-cv-01198-GJS

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**MEMORANDUM OPINION AND
ORDER**

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26 I. PROCEDURAL HISTORY

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28 Plaintiff William D. (“Plaintiff”) filed a complaint seeking review of the
decision of the Commissioner of Social Security denying his application for
Supplemental Security Income (“SSI”). The parties filed consents to proceed before
the undersigned United States Magistrate Judge [Dkts. 10 and 14] and briefs [Dkt.
19 (“Pl. Br.”), Dkt. 24 (“Def. Br.”), Dkt. 27 (“Pl. Reply”)] addressing disputed
issues in the case. The matter is now ready for decision. For the reasons discussed
below, the Court finds that this matter should be affirmed.

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II. ADMINISTRATIVE DECISION UNDER REVIEW

Plaintiff filed an application for SSI on December 20, 2016. [Dkt. 17, Administrative Record (“AR”), 201-203.] Plaintiff alleged he became disabled and unable to work beginning June 27, 2012, due to degenerative disc disease, dizziness, and headaches. [AR 206.] Plaintiff’s application was denied initially, on reconsideration, and after a hearing before Administrative Law Judge (“ALJ”) Mason Harrell, Jr. [AR 1-6, 15-28.]

Applying the five-step sequential evaluation process, the ALJ found that Plaintiff was not disabled. *See* 20 C.F.R. §§ 416.920(b)-(g)(1). At step one, the ALJ found that Plaintiff had not engaged in substantial gainful activity since December 20, 2016, the application date. [AR 17.] At step two, the ALJ found that Plaintiff suffered from degenerative disc disease of the cervical and lumbar spine; a history of vertigo; a history of hypertension; headaches; a history of right femur fracture; a history of a transient ischemic attack; umbilical hernia; anxiety; and depression. [AR 17.] The ALJ determined at step three that Plaintiff did not have an impairment or combination of impairments that meets or medically equals the severity of one of the listed impairments. [AR 18.]

Next, the ALJ found that Plaintiff had the residual functional capacity (“RFC”) to perform a restricted range of light work, including the ability to lift and/or carry up to 20 pounds occasionally and 10 pounds frequently, stand and/or walk 3-4 hours in an 8-hour workday, with a sit or stand option, sit 6 hours in an 8-hour workday, he is limited to occasional pushing and/or pulling with the lower extremities, and he can occasionally stoop, crouch, kneel and crawl. Plaintiff, however, is precluded from climbing stairs, ladders, ropes or scaffolds and he cannot have exposure to hazards, heights, vibrations, or extreme cold weather; he cannot interact with the public, he cannot perform complex or detailed tasks, but he can have occasional teamwork. He would be absent eighteen days per year. [AR 20.]

1 Applying this RFC, the ALJ found at step four that Plaintiff could not
2 perform his past relevant work as given the limitations in the RFC findings. [AR
3 26.] However, at step five, the ALJ concluded that Plaintiff is able to perform other
4 work that exists in significant numbers in the economy. [AR 27.] Plaintiff sought
5 review of the ALJ’s decision, which the Appeals Council denied, making the ALJ’s
6 decision the Commissioner’s final decision. [AR 1-6.] This appeal followed.

7 **III. GOVERNING STANDARD**

8 Under 42 U.S.C. § 405(g), the Court reviews the Commissioner’s decision to
9 determine if: (1) the Commissioner’s findings are supported by substantial
10 evidence; and (2) the Commissioner used correct legal standards. *See Carmickle v.*
11 *Comm’r Soc. Sec. Admin.*, 533 F.3d 1155, 1159 (9th Cir. 2008); *Brewes v. Comm’r*
12 *Soc. Sec. Admin.*, 682 F.3d 1157, 1161 (9th Cir. 2012) (internal citation omitted).
13 “Substantial evidence is more than a mere scintilla but less than a preponderance; it
14 is such relevant evidence as a reasonable mind might accept as adequate to support a
15 conclusion.” *Gutierrez v. Comm’r of Soc. Sec.*, 740 F.3d 519, 522-23 (9th Cir.
16 2014) (internal citations omitted).

17 The Court will uphold the Commissioner’s decision when the evidence is
18 susceptible to more than one rational interpretation. *See Molina v. Astrue*, 674 F.3d
19 1104, 1110 (9th Cir. 2012). However, the Court may review only the reasons stated
20 by the ALJ in his decision “and may not affirm the ALJ on a ground upon which he
21 did not rely.” *Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007). The Court will not
22 reverse the Commissioner’s decision if it is based on harmless error, which exists if
23 the error is “inconsequential to the ultimate nondisability determination, or if despite
24 the legal error, the agency’s path may reasonably be discerned.” *Brown-Hunter v.*
25 *Colvin*, 806 F.3d 487, 492 (9th Cir. 2015) (internal quotation marks and citations
26 omitted).

27 **IV. DISCUSSION**

28 Plaintiff argues the ALJ failed to articulate legally sufficient reasons for rejecting

1 his subjective symptom testimony. [Pl. Br. at 6-16.] Plaintiff requests reversal and
2 remand for payment of benefits or, in the alternative, remand for further
3 administrative proceedings. [Pl. Br. at 15-16.] Defendant asserts that the ALJ's
4 decision should be affirmed. [Def. Br. at 15.]

5 Once a disability claimant produces evidence of an underlying physical or
6 mental impairment that could reasonably be expected to produce the symptoms
7 alleged and there is no affirmative evidence of malingering, the ALJ must offer
8 "specific, clear and convincing reasons" to reject the claimant's testimony about the
9 severity of his symptoms. *Trevizo v. Berryhill*, 871 F.3d 664, 678 (9th Cir. 2017)
10 (citation omitted); *Smolen v. Chater*, 80 F.3d 1273, 1284 (9th Cir. 1996). The ALJ
11 must specifically identify the testimony that is being rejected and explain what
12 evidence undermines that testimony. *See Treichler v. Comm'r, Soc. Sec. Admin.*,
13 775 F.3d 1090, 1102-03 (9th Cir. 2014); *Reddick v. Chater*, 157 F.3d 715, 722 (9th
14 Cir. 1998); *see also Trevizo*, 871 F.3d at 679, n.5 (clarifying that "assessments of an
15 individual's testimony by an ALJ are designed to 'evaluate the intensity and
16 persistence of a claimant's symptoms . . .' and not to delve into wide-ranging
17 scrutiny of the claimant's character and apparent truthfulness") (quoting Social
18 Security Ruling 16-3p).

19 In a February 2017 Adult Function Report, Plaintiff reported that he engaged
20 in light housework and he drove independently, including transporting his son to
21 and from school daily. [AR 225-233.] Plaintiff had no difficulties with personal
22 care including dressing himself, bathing, caring for his hair, shaving, feeding
23 himself, and using the toilet. [AR 226-227.] He did not need reminders for taking
24 his medications, and he prepares simple meals that take about 30 minutes to prepare.
25 [AR 226-227.] He also reported that he went grocery shopping for two hours once a
26 week, managed his own finances, and used a computer and social media. [AR 225-
27 233.]

28 At the hearing on December 6, 2017, Plaintiff reported significant physical

1 limitations. Plaintiff testified that he wakes up with a “massive headache every
2 day.” [AR 41.] He also experiences regular neck pain, back pain, dizziness, and
3 lightheadedness. [AR 51.] He testified that he can sit comfortably for about 15-20
4 minutes, and he can stand and walk for 10-15 minutes. [AR 50.] He experiences
5 dizziness and vertigo three times a day if he turns his neck incorrectly. [AR 50.] He
6 lays down throughout the day to ease his dizziness, and some days he stays in bed
7 all day. [AR 51.] He has difficulty sleeping and it takes him ten minutes to walk up
8 25 steps. [AR 52, 54.] Plaintiff also experiences daily pain in his ankle and leg,
9 which he needs to elevate every day for three hours to alleviate swelling. [AR 52.]

10 The ALJ incorporated many but not all of Plaintiff’s subjectively-described
11 limitations when crafting Plaintiff’s largely restrictive RFC. [See AR 20.] The ALJ
12 concluded, however, that Plaintiff’s more extreme statements were not consistent
13 with the evidence in the record. [See AR 20.] Specifically, the ALJ observed that
14 Plaintiff had received only conservative treatment for his impairments, he was
15 frequently non-compliant with his treatment plan, and Plaintiff’s allegations were
16 inconsistent with the objective evidence and his admitted activities. [See AR 21-
17 24.]

18 Based on its review, the Court finds that, for the following reasons, the ALJ
19 provided specific, clear and convincing reasons for discounting Plaintiff’s subjective
20 symptom testimony. [AR 21.] *See Trevizo*, 871 F.3d at 678; *Smolen*, 80 F.3d at
21 1284.

22 First, the objective medical evidence did not support Plaintiff’s claims. None
23 of the medical sources who opined about Plaintiff’s impairments assessed that
24 Plaintiff could do less than restricted light work. Impartial medical expert, Dr.
25 Nossa W. Maya was present at the hearing and reviewed all the exhibits of record
26 prior to the hearing. Despite Plaintiff’s testimony detailing disabling pain, Dr. Maya
27 opined at the hearing that Plaintiff could complete the equivalent of restricted light
28 work. [AR 46-47.] The State agency medical consultants also reviewed the

1 evidence and determined that Plaintiff could complete a limited range of light work.
2 [AR 71, 95-98.]

3 The ALJ also performed a thorough review of the medical evidence and
4 detailed why the objective findings were wholly inconsistent with Plaintiff's alleged
5 limitations. For example, the ALJ noted that despite Plaintiff's allegations that he
6 suffers from debilitating neck and back pain, results of the July 2014,
7 electromyography test and nerve conduction study were all within normal limits
8 with no evidence of electrical instability. [AR 23, 331.] A radiology report from a
9 2016 cervical MRI noted "mild multilevel degenerative disc disease," "very mild
10 narrowing of the right neural foramen," "moderate bilateral neural stenosis at C5-6,"
11 and "no significant central canal stenosis throughout the cervical region." [AR 23,
12 519-520.] The ALJ also noted that in 2017, orthopedic surgeon Dr. Allen found
13 Plaintiff to be "a well-developed, well-nourished male who ambulates into the
14 examination room with a normal heel to toe gait." [AR 544.] During the
15 examination, Plaintiff only had "mild difficulty transferring from the chair to
16 standing and from standing to the exam table." [AR 23-24, 544.] Although Dr.
17 Allen noted that Plaintiff was tender to palpation in the back of the neck with some
18 limited range of motion, he had no tenderness in the extremities and his motor
19 strength and reflex testing were normal. [AR 544-545.] At the conclusion of
20 Plaintiff's visit, Dr. Allen recommended only "conservative intervention" and
21 reported: "no surgery indicated at this time." [AR 545]. The ALJ correctly found
22 that this substantial evidence was not in keeping with Plaintiff's allegations of total
23 disability. While the ALJ's interpretation of the evidence may not be the only
24 reasonable one, his conclusion that some of Plaintiff's alleged limitations were
25 unsupported by the objective evidence was reasonable and supported by substantial
26 evidence. *See Rollins v. Massanari*, 261 F.3d 853, 857 (9th Cir. 2001) (court may
27 not "second-guess" an ALJ's reasonable interpretation, provided it is supported by
28

1 substantial evidence); *Thomas v. Barnhart*, 278 F.3d 947, 959 (9th Cir. 2002)
2 (same).

3 The second reason the ALJ gave for discounting Plaintiff's testimony was his
4 noncompliance with his prescribed treatment plan despite recommendations that his
5 impairments could be effectively treated. This reason was clear and convincing.
6 For example, the ALJ noted that on September 9, 2013, Plaintiff complained of
7 dizziness and was assessed with "probable" benign positional vertigo. [AR 22, 889-
8 890.] Dr. Schual-Berke prescribed Antivert for dizziness and suggested that
9 Plaintiff follow up with an ear doctor; however, Plaintiff did not. [AR 890.] The
10 record also does not show that he continued to take Antivert or any other medication
11 for vertigo, without explanation. On February 10, 2015, Plaintiff requested epidural
12 injections for his neck from Dr. Salwan who referred him to pain management. [AR
13 665.] Plaintiff failed to complete that referral. [AR 50-51, 662.] The ALJ also
14 noted that on March 24, 2015, Plaintiff was approved for physical therapy and
15 advised to schedule an appointment. [AR 23, 658.] Notably, the record does not
16 show that Plaintiff followed up with that referral. In fact, in November 2016,
17 Plaintiff reported that he tried to attend physical therapy, but they had not received
18 the authorization (AR 600), however, by February 2017, the ALJ noted that Plaintiff
19 still had not started physical therapy. [AR 23, 583.] Noncompliance with
20 prescribed treatment is a proper basis to discount credibility. *See* 20 C.F.R. §
21 404.1530(a) ("In order to get benefits, you must follow treatment prescribed by your
22 medical source"); *Tommasetti v. Astrue*, 533 F.3d 1035, 1039 (9th Cir. 1008)
23 (failure to follow a prescribed course of treatment is a valid reason for discounting
24 subjective symptom allegations).

25 Finally, the ALJ also found that Plaintiff offered inconsistent statements about
26 the extent of his abilities. [AR 23-24.] *See Molina*, 674 F.3d at 1112 (ALJ may
27 consider "whether the claimant engages in daily activities inconsistent with the
28 alleged symptoms"). The ALJ found that despite Plaintiff's allegations of disabling

1 neck pain and extreme dizziness, Plaintiff drove his son to and from school daily.
2 [AR 21-22.] On June 15, 2016, Plaintiff presented to the emergency room with eye
3 pain, reporting that he was “weed eating” when something flew into his eye. [AR
4 468]. The ALJ found that Plaintiff’s performance of yard work on this date was
5 inconsistent with his allegations of limitations. [AR 23.] The extent of these
6 domestic activities supports the ALJ’s conclusion that Plaintiff was less than fully
7 credible when reporting the severity of his alleged disabling functional limitations.
8 *See Curry v. Sullivan*, 925 F.2d 1127, 1130 (9th Cir. 1990) (finding that claimant’s
9 ability to “take care of her personal needs, prepare easy meals, do light housework,
10 and shop for some groceries . . . may be seen as inconsistent with the presence of a
11 condition which would preclude all work activity”) (*citing Fair v. Bowen*, 885 F.2d
12 597, 604 (9th Cir. 1989)). Where, as here, a “claimant engages in daily activities
13 inconsistent with the alleged symptoms,” an ALJ may discredit his testimony of
14 totally disabling impairment. *Molina*, 674 F.3d at 1112.

15 On appellate review, the Court does not reweigh the hearing evidence
16 regarding Plaintiff’s credibility. Rather, this Court is limited to determining whether
17 the ALJ properly identified clear and convincing reasons for discrediting Plaintiff’s
18 credibility, which the ALJ did in this case. *See Smolen*, 80 F.3d at 1284. It is the
19 ALJ’s responsibility to determine credibility and resolve conflicts or ambiguities in
20 the evidence. *See Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir. 1989). If the
21 ALJ’s findings are supported by substantial evidence, as here, this Court may not
22 engage in second-guessing. *See Fair*, 885 F.2d at 604. The above reasons
23 constitute clear and convincing reasons for discounting Plaintiff’s testimony
24 regarding his symptoms and functionality.

25 Accordingly, reversal is not warranted based on the ALJ’s consideration of
26 Plaintiff’s testimony regarding the nature and severity of his symptoms.

27 ///

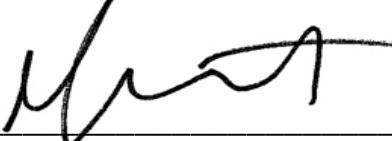
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1 **V. CONCLUSION**

2 For all of the foregoing reasons, **IT IS ORDERED** that the decision of the
3 Commissioner finding Plaintiff not disabled is AFFIRMED.

4 **IT IS SO ORDERED.**

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6 DATED: July 16, 2019

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10 GAIL J. STANDISH
11 UNITED STATES MAGISTRATE JUDGE